

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ALI MEHRALIAN,

Civil No. 15-1877 (JRT/JSM)

Petitioner,

v.

REPORT AND RECOMMENDATION

COMMISSIONER OF CORRECTIONS,
SHERBURNE COUNTY JAIL

Respondent.

JANIE S. MAYERON, United States Magistrate Judge

Petitioner Ali Mehralian commenced this action by filing a petition for a writ of habeas corpus. In an order dated April 14, 2015, this Court informed Mehralian that the claims raised in his habeas petition could only be considered in a civil action. See *Spencer v. Haynes*, 774 F.3d 467, 470-71 (8th Cir. 2014). This Court also noted several infirmities in Mehralian's habeas petition which precluded this Court from considering the petition as though it were a civil complaint. Mehralian was given until May 8, 2015 to file a civil complaint or amended habeas petition, failing which this Court would recommend that this action be dismissed without prejudice for failure to prosecute. See Fed. R. Civ. P. 41(b).

That deadline has now passed, and Mehralian has not filed an amended habeas petition or civil complaint as previously ordered. Accordingly, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. See *Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) ("A district court has

discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

RECOMMENDATION

Based on the foregoing, and on all of the files, records, and proceedings herein,

IT IS HEREBY RECOMMENDED THAT:

1. This action be DISMISSED WITHOUT PREJUDICE for failure to prosecute.
2. Petitioner Ali Mehralian's application to proceed *in forma pauperis* [Docket No. 2] be DENIED AS MOOT.
3. Mehralian's motion to appear before a federal district court judge [Docket No. 3] be DENIED AS MOOT.

Dated: May 18, 2015

Janie S. Mayeron

JANIE S. MAYERON

United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore, not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in LR 72.2(c).

Under Advisement Date: This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.